

CITY OF SAN ANTONIO
DEPARTMENT OF COMMUNITY INITIATIVES



REQUEST FOR PROPOSAL
("RFP")
to
College Access & Opportunity Center
(RFP 10-017)

Issued: December 6, 2009

Proposals Due: January 8, 2010

This solicitation has been identified as High-Profile.

Notice Regarding Prohibition on Campaign or Officeholder Contributions for Individuals and Entities Seeking High-Profile Contracts. Under Section 2-309 of the Municipal Campaign Finance Code, the following are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee that contributes to City Council elections from the 10th business day after a contract solicitation has been released until 30 calendar days after the contract has been awarded ("black out" period):

- 1 legal signatory of a high-profile contract;
- 2 any individual seeking a high-profile contract;
- 3 any owner or officer of an entity seeking a high-profile contract;
- 4 the spouse of any of these individuals;
- 5 any attorney, lobbyist or consultant retained to assist in seeking contract.

A high-profile contract cannot be awarded to the individual or entity if a prohibited contribution has been made by any of these individuals during the "black out" period.

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I. BACKGROUND

The City of San Antonio, Community Initiatives Department (“City”) seeks proposals from qualified Respondents interested in providing and operating services for a College Access & Opportunity Center.

A critical mass of high skilled and college graduates serve as essential ingredients in creating and sustaining an economically, socially and culturally vibrant community. Additionally, the U. S. Department of Labor estimates that college graduates earn \$1 million over their lifetime as oppose to high school graduates. Nationally, 27% of the adult population has graduated from college. In San Antonio, 23% of the adult population has completed a college education.

The goal of the College Access and Opportunity Center will be to close the college graduation gap for San Antonio by 2012. Toward this goal, the City of San Antonio proposes to invest up to \$500,000 annually of which a portion may be used for operating and rental costs, in an entity or entities who will commit to this result. The City will expect annual performance indicators demonstrating that progress is being made toward the 2012 goal. Additionally, the City of San Antonio is prepared to invest \$750,000, on a one time basis toward the capital development of this center.

The City and successful proposer will identify and develop a center that encompasses the role that good design can play in shaping the attitudes and consciousness of the students and parents that will utilize the College Access and Opportunity Center. The specific details of the facility are still evolving. It is the City’s expectation that the Center will be developed with input from the Respondent selected to provide the services requested herein. It is the City’s intent to invest \$750,000 for capital development of a College Access and Opportunity Center.

II. PROPOSED SCOPE OF SERVICES

The proposed College Access and Opportunity Center must offer a teen engaging environment, operate during hours of teen and parent availability, including evenings and weekends. The center must be centrally located, accessible by public transportation with available free parking. Proposals should develop a robust array of supports to achieve the result. The center should serve all San Antonio high school students and their parents. However, the proposer will be encouraged to recruit first generation college attendees, students at or below 200% of the Federal Poverty Level and leverage partnerships and collaborations with other entities sharing the mission of the College Access and Opportunity Center.

Recommended proposed services should include, but are not limited to the following:

- a. Space for college recruiters
- b. Pre- SAT type classes
- c. Computer Lab
- d. Immediate assistance with the completion of the FAFSA
- e. Information on scholarships, 529 Individual Development Accounts (IDA), Texas Tomorrow Fund, and other college financing packages
- f. Access to free tax services through the Volunteer Income Tax Assistance Program (VITA)
- g. Media campaign
- h. Pre-launch virtual center and web- based access that will be operational within thirty days of funding allocation.

Respondents shall be required to demonstrate the ability to operate the College Access and Opportunity Center, preferably by February 16, 2010. Through the City's intent to provide a facility, at City's expense, that represents a turn key situation for the selected Respondent, if the Respondent believes they can deliver the required services using an existing facility in San Antonio already under control of the Respondent, the RFP response should reflect that fact along with a cost analysis that identifies all of the expenses associated with using Respondents facility.

At City's sole option it may elect to use the selected Respondent's facility or develop its own. The selected Respondent will be expected to participate in the process of developing the Center facility. Under the City's leadership the selected Respondent will provide input on the location and design of the Center including incorporation of any features that are identified in the responses to this RFP as critical to the success of the program proposed by the Respondent. The RFP response must include a narrative outlining economically sustainable features that should be included in the Center design and that will include sub-tenants inclusive for a synergistic component; if properly implemented will contribute to Center's success.

General Information

1. The Center will be centrally located within the downtown Central Business District or close thereby. The City has completed an analysis of features suggested for inclusion into this program and identified a space need of about 7,200 square feet (the space program is attached) for this program. Prior to the award of a contract for these services the City will identify sites for this program that are sufficient in size, accessible via existing public transportation routes and have sufficient parking. The Respondent as part of its submission should review this space program and conform that it is representative of the space need envisioned by the Respondent for the Center or if modifications should be incorporated, Respondent should identify such modification(s) and provide a justification for incorporating them into the space need. Additionally, the City has determined that co-locating other "like minded" programs within the Center may be advantageous. If the Respondent concurs that it would be beneficial to co-locating all or part of its existing programs within the facility, the RFP response must include a detailed space program for the Respondent's co-located functions along with a representation that Respondent will pay a monthly rent equal to market rate for its proportionate occupancy within the facility.
2. The City reserves the right to interview selected Respondent's staff, personnel and applicants to positions associated with this scope of work.
3. No subcontractor or other service providers will be hired by the selected Respondent in relation to its contract with the City, without specific written approval from the City.
4. At any time while the contract between selected Respondent and the City is in effect, should assigned personnel become unavailable so as to unfavorably impact administration of said contract; a competent replacement will be provided immediately.
5. The selected Respondent will provide adequate internal fiscal control procedures to protect the City from financial loss, resulting from any aspect of administering the contract.
6. The Respondent will provide a multi- year phased plan including initial benchmarks.
7. The selected Respondent shall be available to attend meetings and make presentations as requested by the City, such as career fairs or presentations to City Council and Staff.

8. The selected Respondent shall provide all housekeeping and maintenance of equipment for the services referenced in this RFP.

III. OWNERSHIP AND LICENSES

In accordance with Texas law, Respondent acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Respondent pursuant to this Contract shall be the subject of any copyright or proprietary claim by Respondent.

The term “local government record” as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

Respondent acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by any contract awarded pursuant to this RFP, will belong to and be the property of City. Respondent, if awarded this contract, will be required to turn over to City, all such records as required by said contract. Respondent, if awarded this contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City’s written permission, unless required to do so by a Court of competent jurisdiction.

In accordance herewith, Respondent, if selected, agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

IV. INTELLECTUAL PROPERTY

If selected, Respondent agrees to abide by the following regarding intellectual property rights:

Respondent shall pay all royalties and licensing fees. Respondent shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Respondent has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Respondent will immediately:

1. Either:

- a) obtain, at Respondent 's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- c) reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

2. Respondent further agrees to:

- a) assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
- b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- c) indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

- 1. Respondent is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Respondent agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,
- 2. the Software or the equipment is used by the City in the form, state, or condition as delivered by Respondent or as modified without the permission of Respondent, so long as such modification is not the source of the infringement claim,
- 3. the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Respondent with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Respondent assumes responsibility under this section.

V. TERM OF CONTRACT

It is anticipated that the term of the contract shall commence upon award by City Council and final execution of contract or February 16, 2010, whichever is sooner, and shall continue through March 31, 2011. With at least sixty (60) days written notice prior to March 31, 2011, the City may, at its sole option and through appropriate action of the City Council; have the right to extend the term of this contract for up to two (2) one year extensions, with each one year extension subject to the same notice requirement an appropriate action of the City Council. However, the City may terminate this contract at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of the City's budget for each fiscal year.

VI. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference will be held at the Carver Center, 226 Hackberry, San Antonio, Texas 78202, at 10:00 a.m., Local Time, on December 15, 2009. Respondents are encouraged to prepare and submit their questions in writing five (5) calendar days in advance of the Pre-Submittal Conference in order to expedite the proceedings. City's responses to questions received by this due date may be distributed at the Pre-Submittal Conference and posted on the City's website at <http://epay.sanantonio.gov/RFPListings/>. Attendance at the Pre-Submittal Conference is optional, however highly recommended.

This meeting place is accessible to disabled persons. The Carver Center, 226 Hackberry, San Antonio, Texas 78202, is wheelchair accessible. The accessible entrance is located at 226 N. Hackberry. Auxiliary aids and services are available upon request. Interpreters for the Deaf must be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

Any oral responses provided by City staff at the Pre-proposal Conference shall be preliminary. A written summary of the Pre-proposal Conference shall contain official responses, if any. Any oral response given at the Pre-proposal Conference that is not confirmed in the written summary of the Pre-proposal Conference or by a subsequent addendum shall not be official or binding on the City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of the City shall not be binding on the City. Respondents are encouraged to resubmit their questions in writing, to the City Staff person identified in Section X – Restrictions on Communication, after the conclusion of the Pre-proposal Conference.

VII. PROPOSAL REQUIREMENTS

Respondent's Proposal shall include the following items in the following sequence, tabbed and noted with the appropriate heading as indicated below. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.

A. TABLE OF CONTENTS

B. **TAB 1 -EXECUTIVE SUMMARY:** The summary shall include a statement of the work to be accomplished, how Respondent proposes to accomplish and perform each specific service and unique problems perceived by Respondent and their solutions.

C. **TAB 2 – GENERAL INFORMATION FORM:** Use the Form found in this RFP as Attachment A - Part One)

D. **TAB 3– REFERENCES:** Use the Form found in this RFP as Attachment A - Part Two)

E. **TAB 4– EXPERIENCE, BACKGROUND & QUALIFICATIONS:** Use the Form found in this RFP as Attachment A - Part Three)

F. **TAB 5 – PROPOSED PLAN -** Use the Form found in this RFP as Attachment A - Part Four)

- G. **TAB 6 – MISCELLANEOUS INFORMATION** -Include any other relevant information about Respondent you wish the City to consider in its selection.
- H. **TAB 7 – FUNDING BUDGET** - Complete and submit **Funding Budget (Attachment B)**, spreadsheets entitled Total Respondent Budget, Program Budget, and Line Item Detail. In rating the application, the City will consider the integrity of fiscal and programmatic accountability for service delivery and reasonableness of the budget in relation to services proposed. **The Funding Budget (Attachment B) is posted on the City of San Antonio Bidding & Contracting Opportunities Website in Excel Format. <http://epay.sanantonio.gov/RFPListings/>**
- I. **DISCRETIONARY CONTRACTS DISCLOSURE FORM**: Discretionary Contracts Disclosure Form may be downloaded at:
<https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>
- Instructions for completing the Discretionary Contracts Disclosure form:
1. Download form and complete all fields. All fields must be completed prior to submitting the form.
 2. Click on the “Print” button and place the copy in your proposal as indicated in the Proposal Checklist. Place as **TAB 8** within Respondent’s proposal.
- J. **LITIGATION DISCLOSURE FORM**: Complete and submit the Litigation Disclosure Form, found in this RFP as Attachment D. If Respondent is proposing as a team or joint venture, then all persons or entities who will be parties to the contract (if awarded) shall complete and return this form. The Litigation Disclosure form should appear as **TAB 9** within Respondent’s proposal.
- K. **SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM FORM**: Complete, sign and submit the SBEDA form, found in this RFP as Attachment E. Place the SBEDA form as **TAB 10** within Respondent’s proposal.
- L. **PROOF OF INSURABILITY**: Submit a letter from insurance provider stating provider’s commitment to insure the Respondent for the types of coverages and at the levels specified in this RFP if awarded a contract in response to this RFP. Respondent shall also submit a copy of their current insurance certificate. Insert in Proposal Response as **TAB 11**. Provide documents with the original packet only. Additional copies are not required.
- M. **FINANCIAL INFORMATION**: Submit a copy of Respondent’s three most recent annual financial statements, prepared in accordance with Generally Accepted Accounting principles, audited by an independent Certified Public Accountant. Insert in Proposal Response as **TAB 12**. Provide documents with the original packet only. Additional copies are not required.
- N. **SIGNATURE PAGE**: Respondent must complete, sign and submit the Signature Page found in this RFP as Attachment F. The Signature Page must be signed by a person, or persons, authorized to bind the entity, or entities, submitting the proposal. Proposals signed by a person other than an officer of a corporate respondent or partner of partnership respondent shall be accompanied by evidence of authority. Place the signed Signature Page as **TAB 13** within Respondent’s proposal.

- O. **ADDENDUMS:** Respondent shall sign and submit all Addendums (if any) issued for this RFP. Changes to the RFP will be posted to the City of San Antonio's Bidding & Contract Opportunities Website, <http://epay.sanantonio.gov/RFPListings/>. It is Respondent's responsibility to review this site and ascertain whether amendments or revisions have been made prior to submission of a proposal response. Insert in Proposal Response as **TAB 14**.
- P. **PROPOSAL CHECKLIST:** Complete and submit the Proposal Checklist found in this RFP as Attachment G as **TAB 15** within Respondent's proposal.

Respondent is expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely. **FAILURE TO COMPLETE AND PROVIDE ANY OF THESE PROPOSAL REQUIREMENTS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.**

VIII. AMENDMENTS TO RFP

Changes, amendments, or written responses to questions received in compliance with Section X, Restrictions on Communication may be posted on the City's website at <http://epay.sanantonio.gov/RFPListings/>. It is Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submission of a proposal. A Respondent who does not have access to the Internet, must notify City in accordance with Section X, Restrictions on Communication, that Respondent wishes to receive copies of changes, amendments, or written responses to questions by mail.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFP, and changes to the RFP – if any – shall be made in writing only.

IX. SUBMISSION OF PROPOSALS

- A. Respondent shall submit one (1) original, signed in ink, ten (10) copies, and one (1) compact disk (CD) in Adobe PDF format of the Proposal, in a sealed package, clearly marked on the front of the package **"College Access & Opportunity Center"**.

All Proposals must be received in the City Clerk's office no later than **2:00 p.m. Local Time, on January 8, 2010** at the address below. Proposals submitted prior to the above time and date may be modified provided such modifications are sealed and received by the City Clerk's Office prior to the time and date set for submission of proposals. Any Proposal or modification received after this time shall not be considered, and will be returned, unopened to the Respondent. Respondents should note that delivery to the P.O. Box address in a timely manner does not guarantee its receipt in the City Clerk's office by the deadline for submission. Therefore, Respondents should strive for early submission to avoid the possibility of rejection for late arrival.

Mailing Address:

City Clerk's Office, Attn: Department of Community Initiatives
P.O. Box 839966
San Antonio, Texas 78283-3966

Physical Address:

City Clerk's Office, Attn: Department of Community Initiatives
100 Military Plaza
2nd Floor, City Hall
San Antonio, Texas 78205

Proposals sent by facsimile or email will not be accepted.

- B. Proposal Format: Each proposal shall be typewritten, single spaced and submitted on 8 ½" x 11" white paper with original placed inside a three ring binder and each copy to be securely bound in a more economical fashion (i.e. – heat bond, spiral bond, etc.) The use of recycled paper and materials is encouraged. Unnecessarily elaborate brochures, artwork, bindings, visual aides, expensive paper or other materials beyond that sufficient to present a complete and effective submission are not required. Font size shall be no less than 12-point type. All pages shall be numbered and printed two-sided. Margins shall be no less than 1" around the perimeter of each page. Electronic files, websites, or URLs shall not be submitted in lieu of the printed proposal. Each proposal must include the sections and attachments in the sequence listed in the RFP Section VII, Proposal Requirements, and each section and attachment must be indexed and divided by tabs and indexed in a Table of Contents page. Failure to meet the above conditions may result in disqualification of the proposal or may negatively affect scoring.
- C. Respondents who submit proposals to this RFP shall correctly state the true and correct name of the individual, proprietorship, corporation, and /or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nicknames, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the General Information form found in this RFP as Attachment A.

If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on the General Information form, the Director of Community Initiatives shall have the discretion, at any point in the contracting process, to suspend consideration of the proposal.

- D. All provisions in Respondent's proposal, including any estimated or projected costs, shall remain valid for ninety (90) days following the deadline date for submissions or, if a proposal is accepted, throughout the entire term of the contract.

- E. All proposals become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.
- F. Any cost or expense incurred by the Respondent that is associated with the preparation of the Proposal, the Pre-proposal conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

X. RESTRICTIONS ON COMMUNICATION

- A. Respondents are prohibited from communicating with: 1) elected City officials and their staff regarding the RFP or Proposals from the time the RFP has been released until the contract is posted as a City Council agenda item; and 2) City employees from the time the RFP has been released until the contract is awarded. These restrictions extend to “thank you” letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFP and/or Proposal submitted by Respondent. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent’s proposal from consideration.

Exceptions to the Restrictions on Communication with City employees include:

- 1. Respondents may ask verbal questions concerning this RFP at the Pre-Submittal Conference.
- 2. Respondents may submit written questions concerning this RFP to the Staff Contact Person listed in the address below until 3:00 p.m., Local Time, on December 29, 2009. Questions received after the stated deadline will not be answered. It is suggested that all questions be sent by electronic mail or by fax to:

Jennifer Wood, Contract Coordinator
City of San Antonio, Purchasing & General Services
jennifer.wood@sanantonio.gov or to fax # (210) 207-7814

However, questions sent by certified mail, return receipt requested, will also be accepted and should be addressed to:

Jennifer Wood, Contract Coordinator
City of San Antonio, Purchasing & General Services
P.O. Box 839966
San Antonio, TX 78283-3966

If submitting questions by mail, it is recommended to send as certified mail, return receipt requested.

Questions submitted and the City’s responses will be posted in the form of an Addendum to the City's web site at <http://epay.sanantonio.gov/RFPListings/>.

3. Respondents and/or their agents are encouraged to contact the Small Business Outreach Division of the Economic Development Department for assistance or clarification with issues specifically related to the City's Small Business Economic Development Advocacy Program policy and/or completion of the SBEDA form. The point of contact is Ms. Grace Luna. Ms. Luna may be reached by telephone at (210) 207-3900 or by e-mail at Grace.Luna@sanantonio.gov. Contacting her or her office regarding this RFP after the proposal due date is not permitted.
 4. Respondents may provide responses to questions asked of them by the Staff Contact Person after responses are received and opened. During interviews, if any, verbal questions and explanations will be permitted. If interviews are conducted, Respondents shall not bring lobbyists. The City reserves the right to exclude any persons from interviews as it deems in its best interests.
 5. Upon completion of the evaluation process, Respondents shall receive a notification letter indicating the recommended firm and anticipated City Council agenda date. Respondents desiring a review of the solicitation process may submit a written request no later than seven (7) calendar days from the date letter was sent. The letter will indicate the name and address for submission of requests for review.
- B. City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City. Such negotiations, initiated by City staff persons, shall not be considered a violation by Respondent of this section.

XI. EVALUATION CRITERIA

The City will conduct a comprehensive, fair and impartial evaluation of all Proposals received in response to this RFP. The City may appoint a selection committee to perform the evaluation. Each Proposal will be analyzed to determine overall responsiveness and qualifications under the RFP. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the Respondents for interviews. **The target interview date, if interviews are conducted, is Thursday, January 21, 2010. Respondents are encouraged to reserve this date in order to be available, if invited.** If the City elects to conduct interviews, Respondents may be interviewed and re-scored based upon the same criteria. The City may also request additional information from Respondents at any time prior to final approval of a selected Respondent. The City reserves the right to select one, or more, or none of the Respondents to provide services. Final approval of a selected Respondent is subject to the action of the City of San Antonio City Council.

Evaluation criteria:

- A. Experience, Background, Qualifications (35 points)
- B. Proposed Plan (25 points)
- C. Funding Budget (10 points)
- D. Capacity for Operating or Designing a Facility to meet the Center's physical needs (10 points)

E. Small Business Economic Development Advocacy Program (SBEDA) (20 points):

1. A maximum of ten percentage (10) points for Local Business Enterprises (LBEs).

Prime contractors who have a local branch office will receive six percent (6%) of the selection points.

Non-local prime contractors can receive points for subcontracting with local businesses proportional to the amount of work performed by those local subcontractors (i.e. – 50% to local = 5 points). (For example, if a non-local prime contractor subcontracts with a local subcontractor for 50% of the work, they are eligible for up to five points).

2. A maximum of five percentage (5%) points for companies designated as Historically Underutilized Enterprises (HUEs).

Prime contractors who subcontract with HUEs can receive points proportional to amount of work performed by those HUEs (i.e. – 50% to HUEs = 2.5 points). (For example, if a prime contractor subcontracts with a small, minority and/or a small, woman business enterprise for 50% of the work, they are eligible for up to 2.5 points).

S/MBEs and/or SWBEs must be certified by the South Central Texas Regional Certification Agency, the City's certifying agency, or approved by the Director of Economic Development or designee to be considered HUEs.

3. A maximum of five percentage (5%) points for Prime Contractor compliance with the SBEDA Program policy:

- a. One percent (1%) for submission/approval of the SBEDA form.
- b. One percent (1%) for meeting/exceeding the MBE goal.
- c. One percent (1%) for meeting/exceeding the WBE goal.
- d. One percent (1%) for meeting/exceeding the AABE goal.
- e. One percent (1%) for meeting/exceeding the SBE goal.

XII. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

- A. City reserves the right to award one, more than one or no contract(s) in response to this RFP.
- B. The Contract, if awarded, will be awarded to the Respondent(s) whose Proposal(s) is deemed most advantageous to City, as determined by the selection committee, upon approval of the City Council.
- C. City may accept any Proposal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of City. However, final selection of a Respondent is subject to City Council approval.
- D. City reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFP, and to waive informalities and irregularities in the proposals received. City

also reserves the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.

- E. City will require the selected Respondent(s) to execute a contract in substantially the form as attached in Exhibit IV with the City, prior to City Council award. No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of insurance as required in this RFP and the Contract. Contract documents are not binding on City until approved by the City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
- F. This RFP does not commit City to enter into a Contract, award any services related to this RFP, nor does it obligate City to pay any costs incurred in preparation or submission of a proposal or in anticipation of a contract.
- G. If selected, Respondent will be required to comply with the Insurance and Indemnification Requirements established herein.
- H. The successful Respondent must be able to formally invoice the City for services rendered, incorporating the SAP-generated contract and purchase order numbers that shall be provided by the City.
- I. Conflicts of Interest. Respondent acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Section 2-42 of the City’s Ethics Code. (Discretionary Contracts Disclosure – form may be found online at <https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>.)

- J. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, are and shall be deemed to be an independent contractors, responsible for their respective acts or omissions, and that City shall in no way be responsible for Respondent’s actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
- K. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids,

correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk. If mailing a completed conflict of interest questionnaire, mail to: Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. Respondent should consult its own legal advisor for answers to questions regarding the statute or form.

XIII. SCHEDULE OF EVENTS

Following is a list of **projected dates/times** with respect to this RFP:

RFP Release Date	December 6, 2009
Pre-proposal Conference	December 15, 2009, 10:00 am Local Time
Final Questions Accepted	December 29, 2009, 3:00 pm Local Time
Proposals Due	January 8, 2010, 2:00pm Local Time
City Council Presentation	February 11, 2010

RFP ATTACHMENTS

THE DOCUMENTS THAT FOLLOW ARE FORMS THAT MUST BE COMPLETED BY RESPONDENT AND INCLUDED WITH RESPONDENT'S PROPOSAL. ATTACH THESE DOCUMENTS TO YOUR PROPOSAL IN THE ORDER INDICATED IN RFP SECTION VII, WHICH IS ENTITLED "PROPOSAL REQUIREMENTS"

RFP ATTACHMENT A, PART ONE**GENERAL INFORMATION****To be submitted with Respondent's Proposal as TAB 2****1. Respondent Information:** Provide the following information regarding the Respondent.

(NOTE: Co-Respondents are two or more entities proposing as a team or joint venture with each signing the contract, if awarded. Sub-contractors are not Co-Respondents and should not be identified here. If this proposal includes Co-Respondents, provide the required information in this Item #1 for each Co-Respondent by copying and inserting an additional block(s) before Item #2.)

Respondent Name: _____

(NOTE: Give exact legal name as it will appear on the contract, if awarded.)

Principal Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Website address: _____

Year established: _____

Provide the number of years in business under present name: _____

Social Security Number or Federal Employer Identification Number: _____

Texas Comptroller's Taxpayer Number, if applicable: _____

(NOTE: This 11-digit number is sometimes referred to as the Comptroller's TIN or TID.)

DUNS NUMBER: _____

Business Structure: Check the box that indicates the business structure of the Respondent.

☐ Individual or Sole Proprietorship If checked, list Assumed Name, if any: _____

☐ Partnership

☐ Corporation If checked, check one: ☐ For-Profit ☐ Nonprofit

Also, check one: ☐ Domestic ☐ Foreign

☐ Other If checked, list business structure: _____

Printed Name of Contract Signatory: _____

Job Title: _____

(NOTE: This RFP solicits proposals to provide services under a contract which has been identified as "High Profile". Therefore, Respondent must provide the name of person that will sign the contract for the Respondent, if awarded.)

Provide any other names under which Respondent has operated within the last 10 years and length of time under for each: _____

Provide address of office from which this project would be managed: _____

City: _____ State: _____ Zip Code: _____
 Telephone No. _____ Fax No: _____

Annual Revenue: \$ _____

Total Number of Employees: ____

Total Number of Current Clients/Customers: ____

Briefly describe other lines of business that the company is directly or indirectly affiliated with:

List Related Companies: _____

2. **Contact Information:** List the one person who the City may contact concerning your proposal or setting dates for meetings.

Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Email: _____

3. Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes ☐ No ☐

4. Is Respondent authorized and/or licensed to do business in Texas?

Yes ☐ No ☐ If "Yes", list authorizations/licenses.

5. Where is the Respondent's corporate headquarters located? _____

6. **Local/County Operation:** Does the Respondent have an office located in San Antonio, Texas?

Yes ☐ No ☐ If "Yes", respond to a and b below:

a. How long has the Respondent conducted business from its San Antonio office?

Years _____ Months _____

b. State the number of full-time employees at the San Antonio office. _____

If "No", indicate if Respondent has an office located within Bexar County, Texas:

Yes ☐ No ☐ If "Yes", respond to c and d below:

c. How long has the Respondent conducted business from its Bexar County office?

Years _____ Months _____

d. State the number of full-time employees at the Bexar County office. _____

7. **Debarment/Suspension Information:** Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes ☐ No ☐ If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

8. **Surety Information:** Has the Respondent ever had a bond or surety canceled or forfeited?

Yes ☐ No ☐ If "Yes", state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

9. **Bankruptcy Information:** Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes ☐ No ☐ If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

10. **Disciplinary Action:** Has the Respondent ever received any disciplinary action, or any pending disciplinary action, from any regulatory bodies or professional organizations? If “Yes”, state the name of the regulatory body or professional organization, date and reason for disciplinary or impending disciplinary action.

11. **Previous Contracts:**

- a. Has the Respondent ever failed to complete any contract awarded?

Yes ☐ No ☐ If “Yes”, state the name of the organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

- b. Has any officer or partner proposed for this assignment ever been an officer or partner of some other organization that failed to complete a contract?

Yes ☐ No ☐ If “Yes”, state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

- c. Has any officer or partner proposed for this assignment ever failed to complete a contract handled in his or her own name?

Yes ☐ No ☐ If “Yes”, state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

RFP ATTACHMENT A, PART TWO**REFERENCES****To be submitted with Respondent's Proposal as TAB 3**

Provide three (3) references, that Respondent has provided services to within the past three (3) years. The contact person named should be familiar with the day-to-day management of the contract and **be willing to respond to questions** regarding the type, level, and quality of service provided. References may not be from City of San Antonio Officials or Department of Community Initiatives employees.

Reference No. 1:

Firm/Company Name: _____

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Email: _____

Date and Type of Service(s) Provided: _____

Reference No. 2:

Firm/Company Name: _____

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Email: _____

Date and Type of Service(s) Provided: _____

Reference No. 3:

Firm/Company Name: _____

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Email: _____

Date and Type of Service(s) Provided: _____

**RFP ATTACHMENT A, PART THREE
EXPERIENCE, BACKGROUND, QUALIFICATIONS**

To be submitted with Respondent's Proposal as TAB 4

Prepare and submit narrative responses to address the following items. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.

1. Respondents should describe their capacity to plan and implement a program to meet the service objectives specified by this RFP. They should also include a description of the provider practice, its mission, years of experience, scope of services, service capacity, and how the activities proposed in this application fit within its current mission.
2. Describe Respondents experience relevant to the Scope of Services requested by this RFP. List and describe relevant projects of similar size and scope performed over the past four years.
3. Describe the Respondents specific experience with public entities. If Respondent has provided services to the City in the past, identify the names of the project and the department for which Respondent provided service.
4. List other resources, including total number of employees, number and locations of offices, number and types of equipment available to support this project.
5. If Respondent is proposing as a team or joint venture or has included sub-contractors, describe the rationale for selecting the team and the extent to which the team, joint ventures, and/or sub-contractors have worked together in the past.
6. Identify the number and professional qualifications (to include licenses, certifications, associations) of all key staff to be assigned to the project and relevant experience on projects of similar size and scope. State the primary work assignment and percentage of time key personnel will devote to the project if awarded the contract. Provide detailed resumes for key personnel to be assigned to the project.
7. Additional Information: Identify any additional skills, experience, qualifications, and/or any other relevant information about the Respondents qualifications.

**RFP ATTACHMENT A, PART FOUR
PROPOSED PLAN**

To be submitted with Respondent's Proposal as TAB 5

Prepare and submit the following items:

1. Operating Plan –

A. Describe the proposed plan to start up and conduct operations for College Access & Opportunity Center services as identified in Scope of Services:

- a) Describe detailed timeline and schedule of events/tasks necessary for dedicated service center to be operational.
- b) Describe proposed Operating Days and Hours of proposed center
- c) Describe Client Capacity. How many clients can Respondent serve daily?
- d) Describe Services offered in addition to the required services as described in this RFP.
- e) Describe in detail how client services will be scheduled.
- f) Describe in detail how client referrals will be handled.
- g) Describe proposed operating space for service to include location, address, square footage, etc.
- h) Describe how Respondent will offer and provide Pre- SAT type classes
- i) Describe Computer Lab services, types of computers, quantity, etc.
- j) Describe how Respondent will provide immediate assistance with the completion of the FAFSA
- k) Describe how Respondent will provide assistance and Information on scholarships, 529 Individual Development Accounts (IDA), Texas Tomorrow Fund, and other college financing packages
- l) Describe how Respondent will provide and offer access to free tax services through the Volunteer Income Tax Assistance Program (VITA)

2. Marketing Plan –

- a) Describe Plan to market proposed operation, including community outreach and utilization of specific media.
- b) Describe how the marketing plan for the senior Spanish-speaking and Hispanic community.
- c) Provide any samples of outreach or promotional materials that may be used by Respondent.
- d) Identify minimum annual expenditures to be dedicated to marketing efforts.

3. Management and Staffing Plan – Provide an organizational chart that includes all personnel to be assigned to this project to include job/task descriptions. State the anticipated number of key staff that will be on duty during operating hours.

4. Data Systems Management Plan -

- a) Provide a copy of Respondent's standard monthly reports that will be provided to the City for services administered.
- b) Describe in detail Respondent's information system, including software, hardware, security plan and other major systems features:

1. Provide samples of correspondence Respondent uses in its program;
 2. State what formats are available for reports (spreadsheets etc.);
 3. Describe any success stories Respondent may have experienced using its program;
 4. State any problems Respondent have experienced and how they were resolved.
- c) Describe Respondent's database design and detail the data source necessary to support Respondent's analysis and reporting efforts.

5. Quality Assurance Plan

- a) Describe how the Respondent will ensure the delivery of quality services to clients in a timely and efficient manner.
- b) Describe how Respondent will provide Spanish-speaking customer service capabilities and how the Respondent will address any language barriers in the Hispanic community.

6. Additional Information. Provide any additional plans and/or relevant information about Respondent's approach to providing the required services.

RFP ATTACHMENT B

FUNDING BUDGET

To be submitted with Respondent's Proposal as TAB 7

City of San Antonio

General Fund and CCDS Budget Forms

INSTRUCTIONS

The budget forms contain 3 worksheets to be completed.

Move from sheet to sheet by clicking on the tabs at the bottom of the screen.

When you get ready to print these forms, be sure to print "entire workbook"

The following sheets must be completed.

- 1 Total Agency Budget
- 2 Program Budget
- 3 Line Item Budget Detail

All expenses on the Line Item Budget Detail Form must be validated by providing detailed information on how you arrived at the total.

Totals and percents of totals will automatically calculate. However, please ensure that totals are accurate because these formulas will sometimes become corrupted following download and data entry.

The TOTAL AGENCY BUDGET and PROGRAM BUDGET will become a part of the contract. The LINE ITEM BUDGET DETAIL is an administrative budget as required by the contract and will be kept on file by the Program Monitor and Fiscal Monitor. Delegate Agencies should keep a copy of the approved LINE ITEM DETAIL.

TOTAL AGENCY BUDGET**AGENCY NAME:**

REVENUES & EXPENDITURES	Actual Revenue FY 2008	Actual Expenditure FY 2008	Actual Revenue FY 2009	Actual Expenditure FY 2009	Projected Revenue FY 2010
1. City of San Antonio (COSA)					
2. Local Government (other than COSA)					
3. State Government					
4. Federal Government					
5. United Way					
6. Foundation Grants					
7. Donation					
8. Other (list)					
TOTAL	\$0	\$0	\$0	\$0	\$0

TOTAL AGENCY ADMINISTRATIVE COST ALLOCATION*

	%		%	
--	----------	--	----------	--

***Administrative overhead cost allocations are to be reported on the total agency's budget and may not exceed 20% of the City's allocation to the agency.**

Administrative cost allocations should match the agency's Audit and/or IRS 990

NOTE: Funding from the City will be limited to not more 50% of the total agency revenues and expenditures.

This total agency revenue will be calculated based on this page, not on the program budget.

PROGRAM BUDGET

Agency Name:

Program Title:

Cost Category	Cost Allocation				
	Requested from City		*Other Sources		Total
	\$ Amount	%	\$ Amount	%	
Personnel Services	\$0	#DIV/0!		#DIV/0!	\$0
Contractual Services	0	#DIV/0!		#DIV/0!	0
Commodities	0	#DIV/0!		#DIV/0!	0
Fixed Charges	0	#DIV/0!		#DIV/0!	0
Capital Outlay		#DIV/0!		#DIV/0!	0
Total	\$0	#DIV/0!	\$0	#DIV/0!	\$0

*

Identify all other costs of the program, which are NOT requested to be funded by the City of San Antonio on this page only.

This section reserved for DCI use only.

Approved _____ Program Monitor Signature _____ Date _____

Approved _____ Fiscal Monitor Signature _____ Date _____

Approved _____ Fiscal Planning Manager Signature _____ Date _____

LINE ITEM BUDGET DETAIL

Agency Name:

Program Title:

All expenses on the Program Budget Detail Form must be validated by providing detailed information on how you arrived at the total. Detail should be provided ON THIS FORM. You may add lines where necessary.

Personnel Services Schedule

		%		
Position Title	Weekly Salary	Budgeted to the City	Number of Weeks	Total Cost to City
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
Total Salaries 5101010	\$0			

Personnel Services

		Total Cost to City
5103005	FICA (7.65% of Total Salaries)	
5105010	Retirement (description & % paid by Employer)	
5104030	Health Insurance	
5103010	Life Insurance	
5402520	Worker's Compensation (required when salaries are budgeted)	
5402550	Unemployment Insurance	
		Fringe Subtotal
Total Personal Services (Salaries & Fringe Benefits)		

Contractual Services

		Total Cost to City
5205010	Mail and Parcel Post Service	
5206010	Rental of Facilities	
5205020	Rental of Office Equipment	
5207010	Travel Official (provide location and description of expected out-of-town travel)	
5201025	Education	
5203090	Transportation Fees (anticipated miles X max rate of .485 per mile)*	
5205050	Freight and Storage	
5204010	Linen and Laundry Service	
5204050	Maintenance and Repair - Buildings and Improvements	
5204080	Maintenance and Repair - Machinery and Equipment	
5208530	Alarm and Security Services	
5201040	Fees to Professional Contractors	
5203040	Advertising and Publication	
5203050	Membership Dues and Licenses	
5203060	Binding, Printing and Reproduction	
5203070	Subscriptions to Publications (itemize)	
Total Contractual Services		

Commodities

		Total Cost to City
5302010	Office Supplies	\$0
5303010	Janitorial Supplies	
5304005	Clothing and Linen Supplies	
5304010	Food for participants	
5304025	Motor Fuel and Lubricants	
5304040	Chemicals, Medical and Drugs	
5304045	Photographic Supplies	
5304050	Tools, Apparatus and Accessories (under \$100 each)	
5304070	Recreation Supplies	
5301010	Maintenance and Repair Materials (Buildings and Improvements)	
5301030	Maintenance and Repair Materials (Machinery and Equipment)	
5304075	Computer Software	
5304080	Other Commodities	
Total Commodities		\$0

Fixed Charges

		Total Cost to City
5403010	Communications (includes ADP charges)	
5404530	Gas and Electricity	
5404540	Water	
5405030	Liability, Hazard, Fidelity Insurance	
5407020	Direct Welfare Payments (to Participants - itemize by type, i.e. rental, medical, education, etc...)	
Total Other Expenditures		

Capital Outlay

		Total Cost to City
5501000	Computer Equipment	
5501055	Machinery and Equipment - Other	
5501065	Furniture and Fixtures	
Total Capital Outlay		\$0

RFP ATTACHMENT C

DISCRETIONARY CONTRACTS DISCLOSURE FORM To be submitted with Respondent's Proposal as TAB 8

Discretionary Contracts Disclosure Form or may be downloaded at:

<https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>.

Instructions for completing the Discretionary Contracts Disclosure form are listed below:

1. Download form and complete all fields. Note: All fields must be completed prior to submitting the form.
2. Click on the "Print" button and place the copy in proposal response as indicated in the Proposal Checklist.

RFP ATTACHMENT D

LITIGATION DISCLOSURE FORM

To be submitted with Respondent's Proposal as TAB 9

LITIGATION DISCLOSURE

Respond to each of the questions below by checking the appropriate box. Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Yes ☐ No ☐

2. Have you or any member of your Firm or Team to be assigned to this engagement been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Yes ☐ No ☐

3. Have you or any member of your Firm or Team to be assigned to this engagement been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Yes ☐ No ☐

If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

RFP ATTACHMENT E

GOOD FAITH EFFORT PLAN FORM

SBEDA FORM

To be submitted with Respondent's Proposal as TAB10

GOOD FAITH EFFORT PLAN*(Page 1 of 4)***NAME OF
PROJECT:*****COLLEGE ACCESS & OPPORTUNITY CENTER*****BIDDER/PROPOSER INFORMATION:**

Name of Bidder/Proposer: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ E-mail Address: _____

Is your firm certified? ____ Yes ____ No (If yes, please submit Certification Certificate.)

1. List all subcontractors/suppliers that will be used for this contract. (Indicate all MBEs-WBEs-AABEs-SBEs. Use additional sheets as needed.)

NAME AND ADDRESS OF SUBCONTRACTOR'S/SUPPLIER'S COMPANY	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE- AABE- SBE CERTIFICATION NUMBER

Only companies certified as an MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied toward the contracting goals. All MBE-WBE-AABE-SBE subcontractors or suppliers must submit a copy of their certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a business is not certified, please call the Small Business Program Division at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.

GOOD FAITH EFFORT PLAN
(Page 2 of 4)

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of Economic Development and Director of the appropriate contracting department (through the proposal of the Request for Approval of Change to Original Affirmed Good Faith Effort Plan).

NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

GOOD FAITH EFFORT PLAN*(Page 3 of 4)*

7. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	REASON FOR REJECTION

8. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.
9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.
- _____
- _____
10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

GOOD FAITH EFFORT PLAN
(Page 4 of 4)

GOOD FAITH EFFORT PLAN AFFIRMATION

I HEREBY AFFIRM THAT THE INFORMATION PROVIDED IN THIS GOOD FAITH EFFORT PLAN IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

SIGNATURE OF AUTHORIZED OFFICIAL

TITLE OF OFFICIAL

DATE

PHONE

FOR CITY USE

Plan Reviewed By:_____

Recommendation: Approval_____ Denial_____

Action Taken: Approved_____ Denied_____

DIRECTOR OF ECONOMIC DEVELOPMENT

RFP ATTACHMENT F

SIGNATURE PAGE

To be submitted with Respondent's Proposal as TAB 13

SIGNATURE PAGE

The undersigned certifies that (s)he is authorized to submit this proposal on behalf of the entity named below:

Respondent Entity Name

Signature: _____

Printed Name: _____

Title: _____

(NOTE: If proposal is submitted by Co-Respondents, an authorized signature from a representative of each Co-Respondent is required. Add additional signature blocks as required.)

Co-Respondent Entity Name

Signature: _____

Printed Name: _____

Title: _____

By signature(s) above, Respondent(s) agrees to the following:

1. If awarded a contract in response to this RFP, Respondent will be able and willing to execute a contract in the form shown in the RFP, as attached and set out in RFP Exhibit IV, with the understanding that the scope and compensation provisions will be negotiated and included in the final document.
2. If Respondent is a corporation, Respondent will be required to provide a certified copy of the resolution evidencing authority to enter into the contract, if other than an officer will be signing the contract.
3. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with the insurance and indemnification requirements set out in RFP Exhibits II & III.
4. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with all representations made by Respondent in Respondent's proposal and during Proposal process.
5. Respondent has fully and truthfully submitted a Litigation Disclosure form with the understanding that failure to disclose the required information may result in disqualification of proposal from consideration.
6. Respondent agrees to fully and truthfully submit a Respondent Questionnaire and understands that failure to fully disclose requested information may result in disqualification of proposal from consideration or termination of contract, once awarded.
7. To comply with the City's Ethics Code, particularly Section 2-61 that prohibits a person or entity seeking a City contract - or any other person acting on behalf of such a person or entity - from contacting City officials or their staff prior to the time such contract is posted as a City Council agenda item.

Acknowledgement of Prohibition regarding Campaign and Officeholder Contributions

I acknowledge that this contract has been designated a "high-profile" contract. I have read and understand the provisions regarding high profile contracts that appear on the cover page of this RFP.

RFP ATTACHMENT G

PROPOSAL CHECKLIST

To be submitted with Respondent's Proposal as TAB 15

PROPOSAL CHECKLIST

Use this checklist to ensure that all required documents have been included in the proposal and that they are properly tabbed and appear in the correct order.

Tab in Respondent's Proposal	Document	Initial to Indicate Document is Attached to Proposal
	Table of Contents	
1	Executive Summary	
2	General Information (See RFP Attachment A, Part One)	
3	References (See RFP Attachment A, Part Two)	
4	Experience, Background & Qualifications (See RFP Attachment A, Part Three)	
5	Proposed Plan (See RFP Attachment A, Part Four)	
6	Miscellaneous Information	
7	Funding Budget (See RFP Attachment B)	
8	Discretionary Contracts Disclosure form	
9	Litigation Disclosure (See RFP Attachment D)	
10	* SBEDA Form (See RFP Attachment E); and • Associated Certificates, if applicable	
11	Proof of Insurability (See RFP Exhibit II) • Insurance Provider's Letter • Copy of Current Certificate of Insurance	
12	Financial Information <i>Provide with ORIGINAL only.</i>	
13	* Signature Page (See RFP Attachment F)	
14	*Addendums	
15	Proposal Checklist (See RFP Attachment G)	
	One (1) Original, ten (10) copies, and one (1) CD of entire proposal in PDF format.	

***Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of proposal.**

Use this checklist to ensure that all required documents have been included in the proposal and that they are properly tabbed and appear in the correct order.

RFP EXHIBIT I

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM POLICY

SMALL BUSINESS PROGRAM

1. **Small Business Participation**

Pursuant to Ordinance No. 2007-04-12-0396, it is the policy of the City of San Antonio to involve Small, Minority, Women and African-American Owned Business Enterprises (S/M/W/AABE) to the greatest extent feasible in the City's discretionary contracts. The intent and purpose of the policy is to ensure that S/M/W/AABE firms have the opportunity to compete for City contracts without discrimination on the basis of race, color, religion, national origin, age, sex or handicap. To accomplish the objectives of the Small Business policy, the City has established specific goals for local S/M/W/AABE participation in this contract.

2. **DEFINITIONS** related to the Small Business Program Provisions:

- a. **Small Business Program:** the Small Business Economic Development Advocacy ("SBEDA") Program governed by this ordinance and managed by the SMALL BUSINESS Program Office.
- b. **Small Business Enterprises (SBE):** a corporation, partnership, sole proprietorship or other legal entity, for the purpose of making a profit, which is independently owned and operated and which meets the U.S. Small Business Administration (SBA) size standard for a small business. All firms meeting these thresholds will be considered an SBE.
- c. **Local Business Enterprise (LBE):** a corporation, partnership, sole proprietorship, or other legal entity which is headquartered within Bexar County for at least one year. For a branch office of a non-headquartered business to qualify as an LBE, the branch office must be located in Bexar County for at least one-year and employ a minimum of ten (10) residents of Bexar County for use at the local branch office.
- d. **Minority Business Enterprise (MBE):** a sole proprietorship, partnership, or corporation owned, operated, and controlled by a minority group member(s) who has at least 51% ownership. Minority group member(s) include African-Americans; Hispanic Americans; Asian-Pacific Americans; Asian-Indian Americans; American Indians; and Disabled Individuals. The minority group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an MBE, the enterprise shall be headquartered in Bexar County or the San Antonio Metropolitan Statistical Area (the SAMSA) for any length of time, or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the MBE's category of contracting for at least one year.
- e. **Woman Business Enterprise (WBE):** a sole proprietorship, partnership, or corporation owned, operated and controlled by women who have at least 51% ownership. The woman or women must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as a WBE, the enterprise shall be headquartered in Bexar County or the SAMSA for any length of time or shall be doing

business in a locality or localities from which the City regularly solicits or receives bids on or proposals for, City contracts within the WBE's category of contracting for at least one year.

- f. **African-American Business Enterprise (AABE)**: a sole proprietorship, partnership, or corporation owned, operated and controlled by an African-American group member(s) who has at least 51% ownership. The African American Group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an AABE, the enterprise shall be headquartered in Bexar County or the SAMSA for any length of time or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the AABE's category of contracting for at least on year.

3. **Goals for Small Business Participation**

The goals for the utilization and participation of SBE-MBE-WBE-AABE businesses on this contract are as follows:

MBE	31%
WBE	10%
AABE	2.2%
SBE	50%

Please note that a small business could be classified in multiple categories and thus their utilization could in theory be counted in each category of goals. For example, **Prime Contractor X** submits a proposal, which specifies that they intend to subcontract with Subcontractor A for 10% of the contract. Subcontractor A is certified by the City as an SBE and MBE (a male-owned Hispanic Business owner can be certified as an SBE and MBE). **Prime Contractor X** also intends to subcontract with Subcontractor B for 13% of the contract. Subcontractor B is certified by the City as SBE, MBE and a WBE (a female-owned Hispanic Business owner can be certified as SBE, MBE and WBE). In addition, **Prime Contractor X** also intends to subcontract 10% of the contract to Subcontractor C—a City certified SBE, MBE and AABE (a male-owned African-American business owner can be certified as both a MBE and as an AABE Business). **Prime Contractor X** is also classified as a local SBE. **Prime Contractor X's** compliance with the Small Business goals under this scenario would be as follows:

	City's Small Business Goals	Prime Contractor X's Compliance
MBE	31%	33%
WBE	10%	13%
AABE	2.2%	10%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the Small Business policy.

Another example regarding compliance with the policy is as follows: **Prime Contractor Y** submits a proposal, which specifies that they intend to partner through a joint-venture agreement with Company D. Company D is certified by the City as both an SBE and MBE (a male-owned Hispanic Business—certified as an SBE and MBE). As part of their joint-venture agreement, Company D will perform on 32.5% of the contract. **Prime Contractor Y** also intends to subcontract 13% of the contract with Subcontractor F. Subcontractor F is a City certified SBE/MBE/WBE and AABE business. **Prime Contractor Y** is also classified as a local SBE. **Prime Contractor Y** compliance with the Small Business goals would be as follows:

	City's Small Business Goals	Prime Contractor Y's Compliance
MBE	31%	45.5%
WBE	10%	13%
AABE	2.2%	13%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the Small Business policy.

4. Good Faith Effort Required

Proposals shall include a Good Faith Effort Plan (GFEP—ATTACHED). The GFEP shall include specific documentation to utilize local, small, MBE-WBE-AABE businesses in a percentage, which equals or exceeds the above goals. **Any proposal that does not include the GFEP form shall be declared non-responsive, and excluded from consideration.**

5. SBE-MBE-WBE-AABE Certification Required

Only companies certified as SBE, MBE, WBE, or AABE through the South Central Texas Regional Certification Agency (SCTRCA), or as approved by the City of San Antonio Director of Economic Development, can be applied towards the contracting goals. Proof of certification must be submitted.

6. Small Business Program Information

Interested contractors/proposers are encouraged to contact the Small Business Division for information regarding the City's Small Business Program Policy in accordance with the City's Communication Policy outlined in the solicitation document. Please call (210) 207-3900 or FAX: (210) 207-3909.

RFP EXHIBIT II

INSURANCE REQUIREMENTS

If selected to provide the services described in this RFP, Respondent shall be required to comply with the insurance requirements set forth below:

INSURANCE

- A) Prior to the commencement of any work under this Agreement, Respondent shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's **Community Initiatives** Department, which shall be clearly labeled "***College Access & Opportunity Center***" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Community Initiatives Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.
- C) A Respondent's financial integrity is of interest to the City; therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General	For <u>Bodily Injury</u> and <u>Property Damage</u> of

Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	\$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

D) The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Respondent shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

City of San Antonio
 Attn: **Community Initiatives** Department
 P.O. Box 839966
 San Antonio, Texas 78283-3966

E) Respondent agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
 - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- F) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Respondent shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- G) In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work hereunder, and/or withhold any payment(s) which become due to Respondent hereunder until Respondent demonstrates compliance with the requirements hereof.
- H) Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under this Agreement.
- I) It is agreed that Respondent's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- J) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.
- K) Respondent and any Subcontractors are responsible for all damage to their own equipment and/or property.

RFP EXHIBIT III
INDEMNIFICATION REQUIREMENTS

If selected to provide the services described in this RFP, Respondent shall be required to comply with the indemnification requirements set forth below:

INDEMNIFICATION

RESPONDENT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RESPONDENT'S activities under this Agreement, including any acts or omissions of RESPONDENT, any agent, officer, director, representative, employee, consultant or subcontractor of RESPONDENT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT RESPONDENT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. RESPONDENT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT known to RESPONDENT related to or arising out of RESPONDENT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at RESPONDENT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving RESPONDENT of any of its obligations under this paragraph.

Draft Contract

This Contract is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its Director of the Department of Community Initiatives pursuant to Ordinance No. _____ dated _____, and **Name of Agency** (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Department of Department of Community Initiatives is designated as the managing City department (hereinafter referred to as "Managing City Department") for the City; and

WHEREAS, the City has provided certain funds from the City of San Antonio General Fund (hereinafter referred to as "General Fund") for **Service Category** services; and

WHEREAS, the City has adopted a budget for the expenditure of such funds, and included therein is an allocation of \$_____ for a project entitled, **Title of Program** (hereinafter referred to as the "Project" or "Program"); and

WHEREAS, the City wishes to engage the Contractor to carry out the Project; NOW THEREFORE:

The parties hereto agree as follows:

I. SCOPE OF WORK

- 1.1 The Contractor will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the City and in compliance with the Executive Summary and Balanced Scorecard Performance Plan affixed hereto and incorporated herein for all purposes as Attachment I.

II. TERM

- 2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on _____ and shall terminate on _____.
- 2.2 The City shall have the option to renew this Contract for an additional period not to exceed one (1) year, subject to (a) the City's receipt of additional monies sufficient to fund the renewal term; (b) the Contractor satisfactorily meeting the performance requirements of this Contract, as solely determined by the City and (c) the prior approval by the City Council of San Antonio of such Contract renewal, as evidenced by an ordinance duly passed and approved.

III. CONSIDERATION

3.1 In consideration, the City will reimburse Contractor for costs incurred in accordance with the budget approved by City Council of San Antonio in Ordinance No. _____ . Said budget is affixed hereto and incorporated herein for all purposes as Attachment II. It is specifically agreed that reimbursement hereunder shall not exceed the total amount of \$_____

3.2 The funding level of this Contract is based on an allocation from the following funding sources:

\$_____ **Funding Source**

Consequently, Contractor agrees to comply with sections I & II B of the **Funding Guide**, affixed hereto and incorporated herein for all purposes as Attachment III.

3.3 Contractor understands and agrees that the funds provided to Contractor from the City's Consolidated Human Development Funding Services Pool shall represent a limited percentage of Contractor's total agency revenues and expenses for the contract term, which percentage is established by City Council and is subject to change. The percentage of the total agency revenues and expenses derived from sources other than City funds is sometimes referred to as the agency's "match" requirement. Contractor shall comply with any matching fund requirements set by City Council that apply to Contractor's contract, regardless of when such requirements are passed. City shall have no obligation to provide any funds hereunder until Contractor demonstrates having secured the percentage of matching funds required of Contractor. If Contractor receives an aggregate amount of \$1,000,000.00 or more in City funds from all City funded contracts, then Contractor shall obtain thirty-five percent (35%) of its total budget from non-City sources. If Contractor receives less than an aggregate amount of \$1,000,000.00 in City funds from all City funded contracts, then Contractor shall obtain fifty percent (50%) of its total budget from non-City sources. City shall require sufficient evidence that such funding is in place prior to making any payments under this Contract. Additionally, Contractor understands and acknowledges that in-kind contributions shall not count toward its matching fund requirements.

IV. PAYMENT

4.1 Contractor agrees that this is a cost reimbursement contract and that the City's liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of City-funded services provided by the Contractor in accordance with the terms of this Contract. Allowable costs are defined as those costs which are necessary, reasonable and allowable under applicable Federal, State, and local law, including but not limited to those laws referenced in Section XII hereof, for the proper administration and performance of the services to be provided under an agreement. All requested reimbursed costs must be consistent with the terms and provisions of the approved budgeted line items described in Attachment II of this Contract. In no event shall the

City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract.

- 4.2 If specific circumstances require an advance payment on this Contract, Contractor must submit to the Director of the Managing City Department a written request for such advance payment, including the specific reason for such request. The Director of the Managing City Department may, in his sole discretion, approve an advance payment on this Contract. It is understood and agreed by the parties hereto that (a) each request requires submission to the Director of the Managing City Department no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be considered by the Director of the Managing City Department on a case-by-case basis, and (c) the decision by the Director of the Managing City Department whether or not to approve an advance payment is final. For purposes of this Contract, the term, and “business day” shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees. In those instances in which advance payments are authorized:
- (A) Advance payments to vendors shall be remitted to the vendors in a prompt and timely manner, defined as not later than ten (10) calendar days after the Contractor is notified that a check is available from the City.
 - (B) The Contractor must deposit City funds in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where Contractor’s total deposits in said bank, including all City funds deposited in such account, exceed the FDIC insurance limit, the Contractor must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Contractor from the Contractor’s banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause the Contractor’s account balance to exceed \$100,000.00 shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended.
- 4.3 Contractor agrees that reimbursements of eligible expenses shall be made monthly, as determined by the Director of the Managing City Department according to standard procedures followed by the City’s Finance Department.
- 4.4 Contractor agrees that all requests for reimbursement shall be accompanied with documentation required by the Director of the Managing City Department.
- 4.5 The Contractor shall submit to City all final requests for payment no later than 45 days from the termination date of this Contract, unless Contractor receives written authorization from the Director of the Managing City Department prior to such 45 day period allowing Contractor to submit a request for payment after such 45 day period.

- 4.6 Contractor agrees that the City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of the Contractor).
- 4.7 Contractor agrees that administrative overhead costs may not exceed twenty percent (20%) of the funding provided by this Contract.
- 4.8 Contractor shall maintain a financial management system, and acceptable accounting records that provide for:
- (A) accurate, current, and complete disclosure of financial support from each Federal, State and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII. of this Contract. If accrual basis reports are required, the Contractor shall develop accrual data for its reports based on an analysis of the documentation available;
 - (B) identification of the source and application of funds for City-sponsored activities. Such records shall contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;
 - (C) effective control over and accountability for all funds, property, and other assets. The Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes. Contractor shall maintain an accounting system that can separate funds by funding source and project;
 - (D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;
 - (E) procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;
 - (F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, including but not limited to the cost principles referenced in Section XII hereof, and the terms of the award, grant, or contract, with the City;
 - (G) supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and
 - (H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project/Projects. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.

- 4.9 Contractor agrees that Contractor costs or earnings claimed under this Contract will not be claimed under another contract or grant from another agency.
- 4.10 Contractor shall establish and utilize a cost allocation methodology and plan which ensures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the project or projects funded by this Contract. The Cost Allocation Plan and supportive documentation shall be included in the financial statements that are applicable to the Contractor's Project. The Cost Allocation Plan is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the program.
- 4.11 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Project/Projects, must immediately, upon receipt, be returned by Contractor to the City.
- 4.12 Upon execution of this Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds hereunder.

V. PROGRAM INCOME

- 5.1 For purposes of this Contract, "program income" shall mean earnings of Contractor realized from activities resulting from this Contract or from Contractor's management of funding provided or received hereunder. Such earnings shall include, but shall not be limited to, interest income; usage or rental/lease fees; income produced from contract-supported services of individuals or employees or from the use of equipment or facilities of Contractor provided as a result of this Contract, and payments from clients or third parties for services rendered by Contractor pursuant to this Contract. At the sole option of the Director of the Managing City Department, Contractor will either (a) be required to return program income funds to City through the Managing City Department, or (b) upon prior written approval by the Director of the Managing City Department, Contractor may be permitted to retain such funds to be:
- (A) added to the Project and used to further eligible Project objectives, in which case proposed expenditures must first be approved by the City; or
- (B) deducted from the total Project cost for the purpose of determining the net cost reimbursed by the City.
- 5.2 In any case where Contractor is required to return program income to the Managing City Department, Contractor must return such program income to City within the timeframe that may be specified by the Director of the Managing City Department. If the Director

of the Managing City Department grants Contractor authority to retain program income, Contractor must submit all reports required by the Managing City Department within the timeframe specified in the Contract.

- 5.3 Contractor shall provide the Managing City Department with thirty (30) days written notice prior to the activity that generates program income. Such notice shall detail the type of activity, time, and place of all activities that generate program income.
- 5.4 The Contractor shall fully disclose and be accountable to the City for all program income. Contractor must submit a statement of expenditures and revenues to the Managing City Department within thirty (30) days of the activity that generates program income. The statement is subject to audit verification by Managing City Department. Failure by Contractor to report program income as required is grounds for suspension, cancellation, or termination of this Contract.
- 5.5 Contractor is prohibited from charging fees or soliciting donations from participants in any City-funded project without the prior written approval of the Director of the Managing City Department.
- 5.6 Contractor shall include this Article V, in its entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF CONTRACT

- 6.1 THIS SECTION INTENTIONALLY LEFT BLANK.
- 6.2 In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, the City Manager, as representative of the City, the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.
- 6.3 Contractor shall not use funds awarded from this Contract as matching funds for any Federal, State or local grant without the prior written approval of the Director of the Managing City Department.
- 6.4 The City shall have the authority during normal business hours to make physical inspections to the operating facility occupied to administer this Contract and to require such physical safeguarding devices as locks, alarms, security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Contract.
- 6.5 The Contractor Board of Directors and Management shall adopt and approve an Employee Integrity Policy and shall establish and use internal program management procedures to preclude theft, embezzlement, improper inducement, obstruction of

investigation or other criminal action, and to prevent fraud and program abuse. These procedures shall specify the consequences to Contractor's employees and vendors involved in such illegal activities to include but not be limited to termination and prosecution where necessary. Said procedures shall be provided to the Managing City Department upon request by the Managing City Department.

6.6 Contractor agrees to comply with the following check writing and handling procedures:

(A) No blank checks are to be signed in advance;

(B) No checks are to be made payable to cash or bearer with the exception of those for petty cash reimbursement, not to exceed a \$100.00 maximum per check. Contractor agrees that the aggregate amount of petty cash reimbursement shall not exceed \$200.00 per location for any given calendar month during the term of this Contract unless Contractor receives prior written approval from the Managing City Department to exceed such limit. Such requests for petty cash must be supported by the submission to the Managing City Department of an original receipt.

(C) Checks issued by City to Contractor shall be deposited into the appropriate bank account immediately or by the next business day after Contractor's receipt of each such check, and shall never be cashed for purposes of receiving any of the face amount back.

6.7 City reserves the right to request Contractor to provide additional records for long distance calls, faxes, internet service and/or cell phone calls charged to the City.

VII. AUDIT

7.1 If Contractor expends \$500,000.00 or more of City dollars, then during the term of this Contract, the Contractor shall have completed an independent audit of its financial statements performed within a period not to exceed ninety (90) days immediately succeeding the end of Contractor's fiscal year or termination of this Contract, whichever is earlier. Contractor understands and agrees to furnish the Managing City Department a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to the Managing City Department by Contractor within fifteen (15) days upon receipt of said report or upon submission of said corrective action plan to the auditor.

Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the Contractor or its programs of any findings about accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to the Managing City Department within a period of ten (10) days upon the Contractor's receipt of the report.

- 7.2 Contractor agrees that if Contractor receives or expends more than \$500,000.00 in federal funds from the City, the audit shall be made in accordance with the Single Audit Act Amendments of 1996, the State of Texas Single Audit Circular, and U.S. Office of Management and Budget Circular (OMBA-133 revision) and Contractor shall also be required to submit copies of their annual independent audit report, and all related reports issued by the independent certified public accountant within a period not to exceed one hundred twenty (120) days after the end of Contractor's fiscal year to the Federal Audit Clearinghouse in Jeffersonville, Indiana. Contractor may submit reports through the following website: <http://gov.fac@census.gov> and may also contact the Clearinghouse by telephone at (301) 763-1551 (voice) or 1-888-222-9907 (toll free) or 1-800-253-0696.

Upon completion of Form SF-SAC, Contractor may submit the completed report by mail to:

Federal Audit Clearinghouse
1201 E. 10th Street
Jeffersonville, Indiana 47132

- 7.3 If Contractor expends less than \$500,000.00 of City dollars, then during the term of this Contract, the Contractor shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of Contractor's fiscal year or termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by Contractor attesting to the correctness of said financial statement.
- 7.4 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City.
- 7.5 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Contract at any and all times deemed necessary by City. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit. In accordance herewith, Contractor agrees to make available to City all accounting and Project records.

Contractor shall during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available and shall continue to make available the books, records, documents, reports, and evidence with respect to all matters covered by this Contract and shall continue to be so available for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines established by applicable law for this Contract. Said records shall be maintained for the required period beginning immediately after Contract termination, save and except when there is litigation or if the audit report covering such Contract has not been accepted, then the Contractor shall retain the records until the resolution of such issues has satisfactorily occurred. The

auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Contractor in accounting for expenses incurred under this Contract, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

The City may, in its sole and absolute discretion, require the Contractor to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract, and the Contractor shall abide by such requirements.

- 7.6 When an audit or examination determines that the Contractor has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the Contractor shall be notified and provided an opportunity to address the questioned expenditure or costs.

Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the Contractor will immediately refund such amount to the City no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. At its sole option, the Managing City Department may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, Contractor shall provide to City a full refund of such amount no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. If Contractor is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by cashiers check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the Contractor is forbidden from reducing Project expenditures and Contractor must use its own funds to maintain the Project.

Contractor agrees and understands that all expenses associated with the collection of delinquent debts owed by Contractor shall be the sole responsibility of the Contractor and shall not be paid from any Project funds received by the Contractor under this Contract.

- 7.7 If the City determines, in its sole discretion, that Contractor is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Contractor pay for such audit from non-City resources.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

- 8.1 The Managing City Department is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by the Managing City Department, the Contractor shall furnish to the Managing City Department and the Grantor of the grant funds, if applicable, such statements, records, data, all policies, procedures, and information and permit the City and Grantor of the grant funds, if

applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.

- 8.2 The Contractor shall submit to the Managing City Department such reports as may be required by the City, including the Contract Monitoring Report and the Results Based Accountability Report which are affixed hereto and incorporated herein as Attachment IV and Attachment V, respectively. The Contract Monitoring Report and the Results Based Accountability Report are to be submitted by the Contractor no later than the 5th business day of each month. The Contractor ensures that all information contained in all required reports submitted to City is accurate.
- 8.3 Contractor agrees to maintain in confidence all information pertaining to the Project/Projects or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, and other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Contract. Contractor shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Contractor shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor shall establish specific procedures designed to meet the obligations of this Article VIII, Section 8.3, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Contractor's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VIII, Section 8.3 shall not be construed to limit the City's or its authorized representatives' right of access to records or other information, confidential or otherwise, under this Contract. Upon termination of this Contract, Contractor shall return to City all copies of materials related to the Project/Projects, including the Confidential Information.
- 8.4 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to State or Federal law, the Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request.
- 8.5 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local

Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, Contractor agrees that no such local government records produced by or on the behalf of Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.

Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Contractor further agrees to turn over to City all such records upon termination of this Contract. Contractor agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the Director of the Managing City Department, unless required to do so by a court of competent jurisdiction. The Managing City Department shall be notified of such request as set forth in Article VIII., section 8.3 of this Contract.

- 8.6 Ownership of Intellectual Property. Contractor and City agree that the Project/Projects shall be and remain the sole and exclusive proprietary property of City. The Project/Projects shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project/Projects and all rights therein shall be solely vested in City. Contractor hereby grants, sells, assigns, and conveys to City all rights in and to the Project/Projects and the tangible and intangible property rights relating to or arising out of the Project/Projects, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project/Projects shall be solely vested in City. Contractor agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. In the event City shall be unable, after reasonable effort, to secure Contractor's signature on any documents relating to Intellectual Property Rights in the Project/Projects, including without limitation, any letters patent, copyright, or other protection relating to the Project/Projects, for any reason whatsoever, Contractor hereby irrevocably designates and appoints City and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by Contractor. Provided, however, nothing herein contained is intended nor shall it be construed to require Contractor to transfer any ownership interest in Contractor's best practice and benchmarking information to the City.
- 8.7 Within a period not to exceed 90 days from the termination date of the Contract, Contractor shall submit all final client and/or fiscal reports and all required deliverables

to City. Contractor understands and agrees that in conjunction with the submission of the final report, the Contractor shall execute and deliver to City a receipt for all sums and a release of all claims against the Project/the Projects.

- 8.8 Contractor shall provide to the Managing City Department all information requested by the Managing City Department relating to the Contractor's Board functions. Information required for submission shall include but may not be limited to:

- (A) Roster of current Board Members (name, title, address, telephone number, fax number and e-mail address);
- (B) Current Bylaws and Charter;
- (C) Terms of Officers;
- (D) Amendments to Bylaws;
- (E) Schedule of anticipated board meetings for current Fiscal Year;
- (F) Minutes of board meetings that are approved by the Contractor's board will become part of the Contractor's project records and as such, must be available to City staff, upon request; provided however, for contracts with the City that are in an amount of \$1,000,000.00 or greater, the Contractor shall submit to the City minutes of board meetings that are approved by the Contractor's Board on a quarterly basis.
- (G) Board Agenda, to be submitted at least three (3) business days prior to each Board meeting.

- 8.9 Contractor agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in section 12.3 of this Contract.

IX. INSURANCE

- 9.1 Contractor agrees to comply with the following insurance provisions:

- (A) Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the Managing City Department, which shall be clearly labeled **Title of Program** in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and shall be mailed, transmitted or conveyed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Contract until such certificate and endorsements shall have been received and approved by the Managing City Department. No officer or employee of the City, other than the City's Risk Manager, shall have authority to waive this requirement.
- (B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and

to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereupon City may incur increased risk.

- (C) A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

- (D) The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Department of Community Initiatives
P.O. Box 839966
San Antonio, Texas 78283-3966

- (E) Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
 - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- (F) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this Contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.
- (G) In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- (H) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Contract.
- (I) It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.
- (J) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract.
- (K) Contractor and any subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNITY

10.1 CONTRACTOR AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this AGREEMENT.

XI. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

11.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Contract:

(A) SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

(B) Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices

and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

- (C) Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.
- (D) SBEDA Plan – The Good Faith Effort Plan ("GFEP"), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Contractor's bid for this project Contract, attached hereto and incorporated herein as "Attachment VI".

11.2 For this Contract, the Parties agree that:

- (A) The terms of the City's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this Contract by reference; and
- (B) The failure of Contractor or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Contract.
- (C) Failure of Contractor or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Contract.
- (D) During the term of this Contract, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Contractor's SBEDA Plan ("Attachment VI") shall constitute a material breach of the SBEDA Program and this Contract.
- (E) Contractor shall pay all suppliers and subcontractors identified in its SBEDA Plan ("Attachment VI") in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by Contractor to the City's Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Contract.

11.3 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Contract:

- (A) Failure of Contractor to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this Contract, or failing to allow such SE to perform a Commercially Useful Function; or
- (B) Modification or elimination by Contractor of all or a portion of the scope of work attributable to an SE upon which the Contract was awarded; or
- (C) Termination by Contractor of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Contract without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or
- (D) Participation by Contractor in a Conduit relationship with an SE scheduled to perform work that is the subject of this Contract.

11.4 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the City may have at law or in equity, or under this Contract for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the City shall be entitled, at its election, to exercise any one or more of the following remedies if the Contractor materially breaches the requirements of the SBEDA Program:

- (A) Terminate this Contract for default;
- (B) Suspend this Contract for default;
- (C) Withhold all payments due to the Contractor under this Contract until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
- (D) Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the City pursuant to the Contract, or from any other amounts due to the Contractor under the Contract.
- (E) Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate

- in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.
- 11.5 The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Contract.
- 11.6 **The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.**
- 11.7 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the City to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Contract. If the recommended remedy is to terminate the Contract, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.
- 11.8 Special Provisions for Extension of Contracts. In the event the City extends this Contract without a competitive Bid or Proposal process, the City Managing Department responsible for monitoring the Contract shall establish the following, subject to review and approval by the SBEDA Program Manager:
- (A) a SBEDA Utilization Goal for the extended period; and
 - (B) a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if Contractor does not meet the SBEDA Utilization Goal; and
 - (C) the required minimum Good Faith Efforts outreach attempts that Contractor shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Contract extension document. The Contractor entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:
 - (i) subject Contractor to any of the remedies listed above; and/or

- (ii) result in a new bid or proposal request of the Contract that was considered for extension.

XII. APPLICABLE LAWS

- 12.1 The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above-referenced law and regulations could subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.
- 12.2 The Contractor understands that certain funds provided it pursuant to this Contract are funds which have been made available by the City's General Operating Budget and/or by Federal, State, or other granting entities. Consequently, Contractor agrees to comply with all laws, rules, regulations, policies, and procedures applicable to the funds received by Contractor hereunder as directed by the City or as required in this Contract. In addition Contractor shall comply with the following Office of Management and Budget (OMB) Circulars, as applicable to the funds received by Contractor hereunder:
- (A) OMB Circular A-21, entitled, "Cost Principles for Educational Institutions";
 - (B) OMB Circular A-87, entitled, "Cost Principles for State, Local and Indian Tribal Governments";
 - (C) OMB Circular A-102, entitled, "Grants and Cooperative Agreements with State and Local Governments";
 - (D) OMB Circular A-122, entitled, "Cost Principles for Non-Profit Organizations"; and
 - (E) OMB Circular A-133, entitled, "Audits of States, Local Governments, and Not for Profit Organizations".
- 12.3 All of the work performed under this Contract by Contractor shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and County of Bexar. Additionally, Contractor shall comply with the following:
- Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html>
 - Government Code Chapter 552 pertaining to Texas Public Information Act found at www.capitol.state.tx.us/statutes/docs/GV/content/htm/gv.005.00.000552.00.htm
 - Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities
 - Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services

The Texas Local Government Code can be found at
<http://www.capitol.state.tx.us/statutes/go/go0055200toc.html>

In addition to the applicable laws referenced above, Contractor must also adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to Contractor hereunder originated. For example, CDBG Contractors are required to follow applicable CDBG regulations.

- 12.4 Contractor shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, Contractor agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
- (A) Title VII of the Civil Rights Act of 1964, as amended;
 - (B) Section 504 of the Rehabilitation Act of 1973, as amended;
 - (C) The Age Discrimination Act of 1975, as amended;
 - (D) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
 - (E) Fair Labor Standards Act of 1938, as amended;
 - (F) Equal Pay Act of 1963, P.L. 88-38; and
 - (G) All applicable regulations implementing the above laws.
- 12.5 The Contractor warrants that any and all taxes that the Contractor may be obligated for, including but not limited to, Federal, State, and local taxes, fees, special assessments, Federal and State payroll and income taxes, personal property, real estate, sales and franchise taxes, are current, and paid to the fullest extent liable as of the execution date of the Contract. The Contractor shall comply with all applicable local, State, and Federal laws including, but not limited to:
- (A) worker's compensation;
 - (B) unemployment insurance;
 - (C) timely deposits of payroll deductions;
 - (D) filing of Information on Tax Return form 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc;
 - (E) Occupational Safety and Health Act regulations; and
 - (F) Employee Retirement Income Security Act of 1974, P.L. 93-406.
- 12.6 Contractor agrees to comply with the Americans with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder.

- 12.7 In compliance with Texas Government Code Section 2264.053, Restrictions on Use of Certain Public Subsidies, if Contractor receives a public subsidy and is found to be in violation of 8 U.S.C. 1324a(f), Contractor shall repay all funds received under this Contract with interest in the amount of three percent (3%). Such repayment shall be made within 120 days of Contractor receiving notice from the City of the violation. For the purposes of this section, a public subsidy is defined as a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry or sector of the state's economy or to retain or create jobs in this state. This term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates or tax abatements.
- 12.8 Contractor agrees to abide by any and all future amendments or additions to all laws, rules, regulations, policies and procedures pertinent to this Contract as they may be promulgated.
- 12.9 All expenditures by the Contractor or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations. If using City of San Antonio General Funds, expenditures shall be made in accordance with all bidding requirements that City would be required to perform under Chapter 252 of the Texas Local Government Code.
- 12.10 Contractor shall submit to the Managing City Department on an annual basis form 990 or 990T.

XIII. NO SOLICITATION/CONFLICT OF INTEREST

- 13.1 The Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of the Contractor or the City. For breach or violation of this warrant, the City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
- 13.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- 13.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance

of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

- 13.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:

(A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or

(B) Have any direct or indirect interest in this Contract or the proceeds thereof.

- 13.5 Contractor acknowledges that it is informed that Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- 13.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, that neither the Contractor nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by Section 2-52 (e) of the City Ethics Code. (If Contractor is a business entity, the Contractor representative further warrants and certifies that no City officer or employee nor any spouse, parent, child sibling or first-degree relative of a City officer or employee owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity). Contractor further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIV. TERMINATION

- 14.1 Termination for Cause - Should the Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by the City, or if the Contractor should violate any of the covenants, conditions, or stipulations of the Contract, the City shall thereupon have the right to terminate this Contract by sending written notice to the Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days

following the day on which such notice is sent). The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, the Contractor's complete and satisfactory performance, of its obligations for which final payment is sought.

- 14.2 Termination for Convenience - This Contract may be terminated in whole or in part when the City determines that continuation of the Project or Projects would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than thirty (30) days following the day on which notice is sent. The Contractor shall also have the right to terminate this Contract and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, the Contractor's complete and satisfactory performance of its obligations for which final payment is sought.
- 14.3 Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of the City, the Contractor may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the Contractor is not in compliance with this Contract. The Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and the City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to the City.
- 14.4 Should the Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment may within City's sole and absolute discretion, be grounds for termination for cause.

XV. PROHIBITION OF POLITICAL ACTIVITIES

- 15.1 Contractor agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.

- 15.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.
- 15.3 The prohibitions set forth in Article XV., sections 15.1 and 15.2 of this Contract include, but are not limited to, the following:
- (A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
 - (B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
 - (C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and
 - (D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.
- 15.4 To ensure that the above policies are complied with, Contractor shall provide every member of its personnel paid out of City funds with a statement of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to the Managing City Department. Contractor shall list the name and number of a contact person from the Managing City Department on the statement that Contractor's personnel can call to report said violations.
- 15.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the Contractor under this Contract may, at the City's discretion, be withheld until the situation is resolved.
- 15.6 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

XVI. PERSONNEL MANAGEMENT

- 16.1 The Contractor agrees to establish internal procedures that assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.
- 16.2 Contractor is permitted to pay its full time employees for the total number of holidays authorized by the City Council for City employees. If the Contractor elects to observe more than the total number of holidays authorized by the City Council for City employees, then such additional days are not eligible for reimbursement under this Contract.
- 16.3 Contractor agrees that the job titles and descriptions set forth in the budget (Attachment II) that affect a salary or range increase may not be changed without justification and prior written approval from the Director of the Managing City Department, as evidenced through a written amendment to this Contract approved by the Director of the Managing City Department.
- 16.4 Contractor agrees that all copies of written job descriptions will be filed in all individual personnel folders for each position in the organization.
- 16.5 The Contractor agrees to provide the City with the names and license registration of any employees of Contractor regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Contract.
- 16.6 At the sole discretion of the Director of the Managing City Department, Contractor may be reimbursed by City for the cost of pay granted to full time, permanent employees that is not chargeable to annual or personal leave only for the reasons listed below:
- (A) To attend annual training in a branch of the Armed Services, not to exceed fifteen (15) business days during the term of this Contract;
 - (B) To serve as a juror;
 - (C) To attend the funeral of someone in the immediate family. Immediate family shall include father, step-father, father-in-law, mother, step-mother, mother-in-law, sister, step-sister, brother, step-brother, spouse, child, and relative, if such relative is actually a member of the employee's household, if he or she was the legal guardian of the employee, or if the employee had legal guardianship of said relative. In such event, the Contractor may grant up to three (3) work days of leave with pay that is not chargeable to annual or personal leave; or
 - (D) To attend seminars or workshops;

- 16.7 Chief Executive Officers (CEOs), directors and other supervisory personnel of Contractor may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, (hereinafter referred to as “Relatives”) who are involved in any capacity with program delivery supported through City funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.

XVII. ADVERSARIAL PROCEEDINGS

- 17.1 Contractor agrees to comply with the following special provisions:
- (A) Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity; and
 - (B) Contractor, at the City’s option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.

XVIII. CITY-SUPPORTED PROJECT

- 18.1 Contractor shall publicly acknowledge that this Project is supported by the City as directed by the Managing City Department.

XIX. EQUIPMENT

- 19.1 The City retains ownership of all equipment/property purchased with funds received through the City and such equipment/property shall, at the City’s sole option, revert to the City at Contract’s termination, for whatever reason. The Contractor agrees to relinquish and transfer possession of and, if applicable, title to said property without the requirement of a court order upon termination of this Contract. Equipment that has reverted to the Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds. It is understood that the terms, “equipment” and “property”, as used herein, shall include not only furniture and other durable property, but also vehicles.
- 19.2 Contractor agrees that no equipment purchased with City funds may be disposed of without receiving prior written approval from the Managing City Department. In cases of theft and/or loss of equipment, it is the responsibility of the Contractor to replace it with like equipment. City funds cannot be used to replace equipment in those instances. All replacement equipment will be treated in the same manner as equipment purchased with City funds.
- 19.3 Contractor shall maintain records on all items obtained with City funds to include:
- (A) A description of the equipment, including the model and serial number, if applicable;
 - (B) The date of acquisition, cost and procurement source, purchase order number, and vendor number;
 - (C) An indication of whether the equipment is new or used;

- (D) The vendor's name (or transferred from);
- (E) The location of the property;
- (F) The property number shown on the property tag; and
- (G) A list of disposed items and disposition

19.4 The Contractor is fully and solely responsible for the safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with City funds. All lost, stolen, missing, damaged and/or destroyed equipment/property shall be reported to the local Police Department and, if applicable, the Federal Bureau of Investigation (FBI). The Contractor shall make such reports immediately and shall notify and deliver a copy of the official report to the Managing City Department within seventy-two (72) hours from the date that Contractor discovers the lost, stolen, missing, damaged and/or destroyed equipment/property. The report submitted by the Contractor to the Managing City Department shall minimally include:

- (A) A reasonably complete description of the missing damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
- (B) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and,
- (C) A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.

19.5 All equipment purchased under this Contract shall be fully insured against fire, loss and theft.

19.6 The Contractor shall provide an annual inventory of assets purchased with funds received through the City to the Managing City Department.

XX. TRAVEL

20.1 The costs associated with budgeted travel for business, either in-town or out-of-town, are allowable costs provided documentation of expenses is present.

- (A) Contractor agrees that mileage reimbursement paid to Contractor's employees shall be reimbursed at a rate no more liberal than the City's policy for mileage reimbursement, which is consistent with Internal Revenue Service (IRS) rules. Contractor further agrees that in order for its employees to be eligible for mileage reimbursement, the employees 1) shall be required to possess a valid Texas Driver's License and liability insurance as required by law, and 2) must record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep such record in the vehicle. Mileage records are subject to spot-checks by the City. Contractor shall strongly encourage the

participation by its employees in an approved defensive driving course. Evidence of the required driver's license and liability insurance must be kept on file with the Contractor.

- (B) Contractor agrees that in order to obtain reimbursement of the costs associated with budgeted out of town travel for business in connection with this Contract, Contractor shall 1) provide City with detailed documentation of such business travel expense(s), 2) ensure that any and all costs associated with out-of-town travel (including per diem rates) shall not be more liberal than the City's travel policies which conform with the reimbursement rates established by the United States General Services Administration, 3) purchase all business travel at economy class rates and shall document such and 4) submit support for conferences to include itineraries and documentation certifying conference attendance.

XXI. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

- 21.1 Contractor agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

XXII. DEBARMENT

- 22.1 Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.
- 22.2 Contractor shall provide immediate written notice to City, in accordance with the notice requirements of Article XXVI herein, if, at any time during the term of the contract, including any renewals hereof, Contractor learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.

XXIII. ASSIGNMENT

- 23.1 Contractor shall not assign or transfer Contractor's interest in this Contract or any portion thereof without the written consent of the City Council of San Antonio, and if applicable, the Grantor of the grant source. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.

XXIV. AMENDMENT

- 24.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Director of the Managing

City Department shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws, and in the following circumstances:

- A. an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments executed without City Council approval pursuant to this subsection and increasing Contract funding during the term of this Contract shall not exceed the foregoing amount;
- B. modifications to Balanced Scorecard Performance Plan set forth in Attachment I hereto, so long as 1) the terms of the amendment stay within the parameters set forth in the Executive Summary, also set forth in Attachment I hereto;
- C. budget line item shifts of funds, so long as the total dollar amount of the budget set forth in section 3.1 of this Contract remains unchanged; provided, however, that budget line item shifts of funds related to personnel services cannot exceed the total dollar amount allocated to personnel services set forth in the budget (Attachment II) of this Contract;
- D. modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Director of the Managing City Department.
- E. modifications to Article III herein to reduce the total amount of reimbursement that shall be made to the Contractor by City, and to amend the budget accordingly which is set forth in Attachment II hereto, in the event that Contractor does not meet the requirements set forth in Article I Overview of the Funding Guide, which is set forth in Attachment III hereto. Contractor shall execute any and all amendments to this Contract that are required as a result of a modification made pursuant to this Section 24.1(E).

XXV. SUBCONTRACTING

- 25.1 None of the work or services covered by this Contract shall be sub-contracted without the prior written consent of the City.
- 25.2 Contractor must comply with all applicable local, State and Federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the parties hereto that the City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is found that all applicable local, State and Federal procurement standards, rules, regulations and laws have not been met by Contractor with respect to any of its sub-contracts, then the Contractor will be deemed to be in default of this Contract, and as such, this Contract will be subject to termination in accordance with the provisions hereof.

- 25.3 Any work or services for sub-contracting hereunder, shall be sub-contracted only by written Contract, and unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Contract. Compliance by sub-contractors with this Contract shall be the responsibility of Contractor. Contractor agrees that payment for services of any sub-contractor shall be submitted through Contractor, and Contractor shall be responsible for all payments to sub-contractors.
- 25.4 Contractor certifies that its subcontractors are not presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

XXVI. OFFICIAL COMMUNICATIONS

- 26.1 For purposes of this Contract, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City:

Director
Department of Community Initiatives
115 Plaza de Armas, Ste. 210
San Antonio, TX 78205

Contractor:

Executive Director/CEO/President
Name of Agency
Agency Address
City/State/Zip Code

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

XXVII. VENUE

- 27.1 Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas. Any action or proceeding brought to enforce the terms of this Contract or adjudicate any dispute arising out of this Contract shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas. Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar, County, Texas.

XXVIII. GENDER

- 28.1 Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXIX. AUTHORITY

- 29.1 The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained. Contractor shall provide evidence to City upon execution of this Contract that it is currently operating as a non-profit entity with a current Internal Revenue Code section 501(c)(3) status, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to the City in the application for funding. Whether a non-profit or for-profit entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide Managing City Department verification of the foregoing requirements no later than the execution date of this Contract.

XXX. LICENSES AND TRAINING

- 30.1 Contractor warrants and certifies that Contractor's employees and its subcontractors have the requisite training, license or certification to provide said services, and meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXXI. INDEPENDENT CONTRACTOR

- 31.1 It is expressly understood and agreed that the Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the City shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 31.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 31.3 Any and all of the employees of the Contractor, wherever located, while engaged in the performance of any work required by the City under this Contract shall be considered employees of the Contractor only, and not of the City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Contractor.

XXXII. SEVERABILITY

- 32.1 If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Contract that is invalid, illegal or unenforceable, there be added as a part of this Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXXIII. CONTRIBUTION PROHIBITIONS

The provisions of Article XXXIII shall apply to all contracts considered “high risk” as that term is defined in the City of San Antonio Contracting Policy and Process Manual.

- 33.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a “high-risk” discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 Calendar days following the contract award. Contractor understands that if the legal signatory entering the Contract has made such a contribution, the City may not award the Contract to that contributor or to that contributor’s business entity. Any legal signatory for a proposed high-risk contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response
- 33.2 Contractor acknowledges that the City has identified this Contract as high risk.
- 33.3 Contractor warrants and certifies, and this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Contract. Should the signor of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

XXXIV. ENTIRE CONTRACT

34.1 This Contract and its attachments, if any, constitute the entire and integrated Contract between the parties hereto and contain all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written.

In witness of which this Contract has been executed effective the _____ day of _____, _____.

**CITY OF SAN ANTONIO:
AGENCY:**

CONTRACTING

Dennis J. Campa, Director
Department of Community Initiatives

Name of Agency

Agency Address

City/ State/ Zip Code

APPROVED BY:

City Manager

Executive Director

Board President (if required by
Agency)

APPROVED AS TO FORM:

City Attorney

ATTACHMENTS

Attachment I-Executive Summary and Balanced Scorecard Performance Plan
Attachment II-Budget
Attachment III-Funding Guide
Attachment IV-Contract Monitoring Report (CMR)
Attachment V- Results Based Accountability Report (RBA)
Attachment VI -SBEDA Plan